

Richard F. Holley, Esq. (NV Bar No. 3077)  
 Victoria L. Nelson, Esq. (NV Bar No. 5436)  
 Ogonna M. Atamoh, Esq. (NV Bar No. 7589)  
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 KEARNEY, JOHNSON & THOMPSON  
 400 South Fourth Street, Third Floor  
 Las Vegas, Nevada 89101  
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 Email: vnelson@nevadafirm.com

E-Filed: March 13, 2007

*Attorneys for Del and Ernestine Bunch*

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
 Debtor.

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

In re:  
 USA SECURITIES, LLC,  
 Debtor.

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA First Trust Deed Fund, LLC

Case No. BK-S-06-10725-LBR  
 Case No. BK-S-06-10726-LBR  
 Case No. BK-S-06-10727-LBR  
 Case No. BK-S-06-10728-LBR  
 Case No. BK-S-06-10729-LBR

Chapter 11

**Jointly Administered under**  
**Case No. BK-S-06-10725-LBR**

**DECLARATION OF RICHARD F. HOLLEY,**  
**ESQ.**

Date of Hearing: OST PENDING  
 Time of Hearing: OST PENDING

Judge: Hon. Linda B. Riegler

I, Richard F. Holley, Esq., under oath and under penalty of perjury say:

1. I am an attorney duly licensed to practice law in the State of Nevada.

2. I am a shareholder with the law firm of Santoro, Driggs, Walch, Kearney, Johnson & Thompson (the "Santoro Firm"), attorneys for Del and Ernestine Bunch ("Creditors") in the above-captioned proceeding.

3. I have personal knowledge of the facts set forth herein.

4. I am over the age of 18 and am mentally competent.

Santoro, Driggs, Walch, Kearney, Johnson & Thompson  
400 South Fourth Street, Third Floor, Las Vegas, Nevada 89101  
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1           5.       I have personal knowledge of the facts in this matter and if called upon to testify,  
2       could and would do so. With respect to matters based upon information and belief, I believe the  
3       statements made to be true and correct.

4           6.       I make this Declaration in Support of the Ex Parte Application For Order  
5       Shortening Time For Hearing On Motion to Compel (the “Ex Parte Application”), and in support  
6       of the Motion to Compel.

7           7.       The Motion to Compel (“Motion”) needs to be heard on shortened time, because  
8       the Debtor’s responses to the Production of Documents and Second Request for Production of  
9       Documents (“Discovery Requests”) are deficient.

10          8.       On January 25, 2007, Bunch propounded upon Debtor a Request for Production  
11       of Documents.

12          9.       On January 25, 2007, Bunch also propounded upon Debtor a Second Request for  
13       Production of Documents.

14          10.       Debtor’s counsel executed a Receipt of Copy on January 25, 2007,  
15       acknowledging receipt of both Discovery Requests. A true and correct of the Receipt of Copy is  
16       attached as **Exhibit “1.”**

17          11.       The time for Debtor to respond to the Discovery Requests expired February 26,  
18       2007.

19          12.       On March 2, 2008, Debtor produced written responses to the Discovery Requests.

20          13.       On March 5, 2007, I prepared and sent a letter to Debtor’s counsel, Lenard  
21       Schwartzter (“Schwartzter”), advising him of the deficiencies in the Discovery Responses, and  
22       requesting a supplemental production on or before March 8, 2007. A true and correct of the  
23       letter dated March 5, 2007 is attached as **Exhibit “2.”**

24          14.       Based upon my conversations with Ms. Ogonna Atamoh of my office, it was my  
25       understanding that the Debtor would produce a disk containing all of Debtor’s checks and bank  
26       statements by March 12, 2007.

27       ...

28       ...

*Richard F. Holley*  
 \_\_\_\_\_  
 RICHARD F. HOLLEY, ESQ.

# EXHIBIT “1”

Richard F. Holley, Esq. (NV Bar No. 3077)  
 Ogonna M. Atamoh, Esq. (NV Bar No. 7589)  
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 KEARNEY, JOHNSON & THOMPSON  
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*Attorneys for Del Bunch and Ernestine Bunch*

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE f/k/a USA CAPITAL, et  
 al.,  
 Debtor.

Case No. BK-S-06-10725-LBR  
 Chapter 11

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

Case No. BK-S-06-10726-LBR  
 Chapter 11

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
 Debtor.

Case No. BK-S-06-10727-LBR  
 Chapter 11

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

Case No. BK-S-06-10728-LBR  
 Chapter 11

In re:  
 USA SECURITIES, LLC,  
 Debtor.

Case No. BK-S-06-10719-LBR  
 Chapter 11

**Affects:**

- ☐ All Debtors  
☒ USA Commercial Mortgage Co.  
☐ USA Securities, LLC  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed  
☐ USA First Trust Deed Fund, LLC

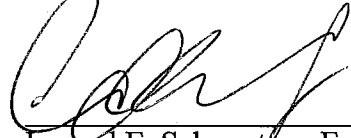
**RECEIPT OF COPY**

Date of Hearing: N/A

Time of Hearing: N/A

**RECEIPT OF COPY** of the following is hereby acknowledged this 25 day of January,  
 2007 as follows:

1. First Request for Production of Documents; and
2. Second Request for Production of Documents



Lenard E. Schwartz, Esq.  
Schwartz & McPherson Law Firm  
2850 South Jones Blvd., #1  
Las Vegas, Nevada 89146  
*Attorneys for Debtors*

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# EXHIBIT “2”

John E. Leach  
Gregory J. Walch  
Nicholas J. Santoro  
Michael E. Kearney  
J. Douglas Driggs, Jr.  
Richard F. Holley  
David G. Johnson  
Ronald J. Thompson  
James E. Whitmire, III  
Daniel L. Schwartz  
Victoria L. Nelson  
Dean S. Bennett  
Kirby C. Gruchow, Jr.  
Andrew J. Glendon

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Kevin L. Johnson  
Lee E. Davis  
Thomas G. Grace  
Sean L. Anderson  
James D. Boyle

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Bryce K. Earl  
Ogonna M. Atamoh  
Jennifer K. Craft  
James P. Jensen  
Ben West  
Michael F. Lynch  
Byron E. Thomas  
Stella B. Dorman  
Tracy A. Gallegos  
F. Thomas Edwards  
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Rachel N. Solow  
Taylor L. Randolph  
  
Of Counsel:  
Anthony A. Zmaila  
Charles L. Titus

Writer's email: rholley@nevadafirm.com

March 5, 2007

***Via E-Mail***

Lenard E. Schwartzer  
Schwartz & McPherson Law Firm  
2850 South Jones Boulevard, Suite 1  
Las Vegas, Nevada 89146-5308

RE: USACM's Responses to Discovery Propounded by Del and Ernestine Bunch

Dear Lenard:

This letter is being sent pursuant to Rule 37(a)(2)(A) of the Federal Rules of Civil Procedure incorporated by reference in Federal Rule of Bankruptcy Procedure Rules 9014 and 7037, and Local Rule 26-7(b).

I am in receipt of the Debtor's response to the first and second requests for production of documents propounded by Del and Ernestine Bunch. With respect to the production, many of the responses are deficient. The purpose of this letter is to identify those responses that are deficient and to determine if the Debtor intends to promptly cure the deficiency without the Bunches filing a motion to compel.

With respect to the First Request for Production of Documents, the following responses are deficient:

Request No. 3: Request No. 3 requests that the Debtor provide copies of all bank statements regarding Account No. 083-4610149 (Choice IV Commercial Checking Account) maintained by USA Commercial Mortgage Co. with Wells Fargo Bank. In response to this



Lenard E. Schwartz  
March 5, 2007  
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request, the Debtor unilaterally limited the production to the period between January 2005 and April 2006, without any explanation. The Bunches believe that all of the requested bank statements for the designated checking account are in the possession of the Debtor, or its representatives, and that there is no justification for not producing the requested documents.

Request No. 5: Request No. 5 requests copies of all bank statements regarding account No. 0895737864 (Collections Trust Account) maintained by USA Commercial Mortgage Co. with Wells Fargo Bank. In response to this request, the Debtor unilaterally limited the production to the period between January 2005 and April 2006 without any explanation. The Bunches believe that all of the requested bank statements for the designated checking account are in the possession of the Debtor, or its representatives, and that there is no justification for not producing the requested documents.

Request No. 6: Requests No. 6 requests copies of all bank statements regarding Account No. 0486-5657146 (Investors Trust Account) maintained by USA Commercial Mortgage Co. with Wells Fargo Bank. In response to this request, the Debtor unilaterally limited the production to the period between January 2005 and April 2006 without any explanation. The Bunches believe that all of the requested bank statements for the designated checking account are in the possession of the Debtor, or its representatives, and that there is no justification for not producing the requested documents.

Request No. 7: Request No. 7 requests copies of all bank statements regarding Account No. 562-7688020 (Discretionary) maintained by USA Commercial Mortgage Co. with Wells Fargo Bank. In response, the Debtor states that it does not have any record of this bank account and is therefore not aware of the existence of any such documents. The Bunches are informed and believe that this particular account was closed and transferred to Bank of America on or about April 13, 2006. Please advise whether this additional information is helpful in enabling the Debtor to respond to this request.

With respect to the Second Request for Production of Documents, the following responses are deficient:

Request No. 1: Request No. 1 requests copies of the 2005 tax return, including all schedules and/or attachments, filed for tax year 2005 on behalf of Investment Partners, including, but not limited to, any requests for extension or other communications with the Internal Revenue Service regarding the 2005 tax return. In response, the Debtor states that USACM's current management is not aware that it has in its possession the 2005 tax return for Investment Partners or any documents relating to requests for extensions or other communications with the Internal Revenue Service. The Bunches are informed and believe that USACM's current management is in fact in possession of all Investment Partners' books and records, including the requested 2005 tax return. Please detail the extent to which anyone with USACM's current management undertook an investigation to locate the requested documents. Please also advise when the Stipulated Protective Order Review will be completed.

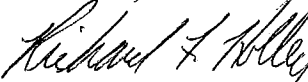
Lenard E. Schwartzer  
March 5, 2007  
Page 3

Request No. 3: Request No. 3 requests copies of all bank statements within the Debtor's possession or control regarding Account No. 10303709 maintained by Investment Partners at Community Bank of Nevada. In response, the Debtor unilaterally limited its production to the period between January 2005 and April 2006 without any explanation. The Bunches believe that all of the requested bank statements for the designated checking account are in the possession of the Debtor, or its representatives, and that there is no justification for not producing the requested documents.

Unless the documents requested, including those unilaterally limited by the Debtor, are produced on or before the close of business on Thursday, March 8, 2007, the Bunches will have no alternative but to file a motion to compel production with the bankruptcy court and seek attorneys' fees and costs incurred in preparing the motion. Hopefully, this will not be necessary and the requested documents will be produced.

Sincerely yours,

SANTORO, DRIGGS, WALCH,  
KEARNEY, JOHNSON & THOMPSON

  
Richard F. Holley, Esq.

RFH:sl

cc: Del & Ernestine Bunch